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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,905	01/29/2002	Stephen Ritland	4510-4	9462

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EXAMINER

O CONNOR, CARY E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 10/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/060,905

Applicant(s)

RITLAND

Examiner

Cary E. O'Connor

Art Unit

3732

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004 and 30 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16, 18-20 and 27-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-14 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10, 16, 18, 19, 27-30, 33, 34 and 36-38 is/are rejected.
- 7) ☒ Claim(s) 4, 31, 32, 35 and 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 81304, 83004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign Country, before the invention thereof by the applicant for a patent.

Claims 7-9, 27, 28, 30, 33, 34, 36-38 are rejected under 35 U.S.C. 102(a) as being anticipated by Winslow (6,063,088). Winslow shows a retractor 100 comprising a guide portion having a guide channel 104 extending longitudinally therealong and having a first end, a second end, and a medial face 122 positioned adjacent the second end. An insert (200 or 400) is configured to fit within the guide channel. The insert has an aperture extending lengthwise therethrough (see U.S. Patent 5,885,299). The guide portion includes grooves 126 formed within the guide channel for receiving a base edge of the insert 200. As to claims 8 and 9, the medial face includes texturing (projections 120). As to claims 27, 28, 30, 33, note the method shown in Figures 12-19. As to claim 34, note the tool 200 which is advanced along the guide channel.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winslow (6,063,088) in view of Velikaris et al (6,524,238). Winslow shows a retractor 100 comprising a guide portion having a guide channel 104 extending longitudinally therealong and having a first end, a second end, and a medial face 122 positioned adjacent the second end. The medial face includes texturing (projections 120). An insert 400 is configured to fit within the guide channel. The insert has an aperture extending lengthwise therethrough (see U.S. Patent 5,885,299). The retractor of Winslow does not include a handle connected angularly with respect to the first end of the guide portion. Velikaris shows a universal handle which may be used to releasably hold various surgical instruments. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retractor of Winslow with the interchangeable handle of Velikaris, because a handle would help the surgeon control the retractor. As to claim 2, note the means for stabilizing 120 the retractor. As to claim 5, note the grooves 126 formed within the guide channel for receiving a base edge of the insert.

Claims 6, 16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winslow (6,063,088) in view of Velikaris et al (6,524,238) as applied to claim 1 above, and further in view of Melkant . The device of Winslow does not include an image tracker. Melkent shows a retractor 130 having an image tracker 190 mounted thereto. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Winslow as modified by Velikaris with an image tracker, mounted thereon, in view of Melkent, so that the location of the

device within the body can be easily determined. As to claims 18 and 19, the diameter of the aperture and the proximal opening cannot be given patentable weight in the claim because the diameter is based on a tool that is not positively claimed.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winslow (6,063,088) in view of Melkant. The device of Winslow does not include an image tracker. Melkent shows a retractor 130 having an image tracker 190 mounted thereto. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Winslow with an image tracker, mounted thereon, in view of Melkent, so that the location of the device within the body can be easily determined.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winslow (6,063,088). Without a showing of criticality, the order in which the insert is placed in the retractor is considered to have been an obvious design choice, to one of ordinary skill in the art.

Allowable Subject Matter

Claims 11-14 and 20 are allowed.

Claims 4, 31, 32, 35 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 703-308-2701. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703-308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cary E. O'Connor
Primary Examiner
Art Unit 3732

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